

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

JEFFERSON COUNTY COMMISSION;  
PATRICIA NOLAND, *as an individual  
and behalf of all others similarly situated*,  
and DALE MANUEL, *as an individual and  
behalf of all others similarly situated*,

Plaintiffs, and

THORNTON COOPER,

Intervening Plaintiff,

v.

Civil Action No. 2:11-CV-989  
(KING, BAILEY, BERGER)

NATALIE E. TENNANT, *in her capacity as  
the Secretary of State*; EARL RAY TOMBLIN,  
*in his capacity as the Chief Executive Officer  
of the State of West Virginia*; JEFFREY  
KESSLER, *in his capacity as the Acting  
President of the Senate of the West Virginia  
Legislature*; and RICHARD THOMPSON, *in  
his capacity as the Speaker of the House of  
Delegates of the West Virginia Legislature*,

Defendants.

DEFENDANTS' RESPONSE TO ORDER ON REMAND

Defendants,<sup>1</sup> Natalie E. Tennant, in her capacity as the Secretary of State West Virginia; Earl Ray Tomblin, in his capacity as the Chief Executive Officer of the State of West Virginia; Jeffrey Kessler, in his capacity as the President of the Senate of the West Virginia Legislature; and Richard Thompson, in his capacity as the Speaker of the House of Delegates of the West Virginia Legislature, by their respective undersigned Counsel, having conferred among themselves and with counsel for the Plaintiffs, hereby respond to the Order on Remand entered on October 5, 2012 [Doc. 83].

First, Defendants point out that jurisdiction in this Court is founded on 28 U.S.C. § 1331 (general federal question) and § 1343 (federal civil rights). Complaint at ¶ 9 [Doc. 1]. On September 25, 2012, the Supreme Court of the United States found that the federal claims of the Plaintiffs' and the Intervening Plaintiff lacked merit. [Doc. 82] The Supreme Court remanded this case for determination of claims raised by the Plaintiffs and the Intervening Plaintiff arising under the West Virginia Constitution. *Id.* at 8. Obviously, these claims do not arise under any federal law. Nor is it appropriate for this Court to exercise supplemental jurisdiction over the state law claim as “(1) the claim raises a novel or complex

---

<sup>1</sup>The Defendants Secretary of State Natalie E. Tennant and Governor Earl Ray Tomblin continue to regard their presence in the instant litigation as that of nominal parties whose roles with respect to the challenged redistricting legislation are purely ministerial. As previously stated, these Defendants take no position on the substantive merits of the claims advanced by the Plaintiffs. These Defendants agree with the suggestion of the other Defendants that if this Court is not inclined to dismiss the remaining state-law-based claims, that the appropriate state-law questions be certified to the West Virginia Supreme Court of Appeals

issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, [and] (3) the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c). Consequently, this Court should dismiss the remaining claims to allow them to proceed in State Court.

If the Court is not inclined to dismiss the remaining claim, the Defendants agree that, after a brief opportunity for the parties to supplement the record, the Court certify a question to the Supreme Court of Appeals of West Virginia as to whether the provisions of S.B. 1008 meet the requirements of Article I, Section 4 of the Constitution of West Virginia. With respect to timing, the Defendants propose that the parties be given forty-five (45) days to file any additional supplements to the record and thereafter be given fifteen (15) days to reply to the submission of any other party.

**NATALIE E. TENNANT, in her capacity  
as the Secretary of State**

**By Counsel**

/s/ Thomas Rodd

Thomas W. Rodd (WVSB 3143)  
West Virginia Attorney General's Office  
812 Quarrier Street, 6<sup>th</sup> Floor  
Charleston, WV 25301  
[twr@wvago.gov](mailto:twr@wvago.gov)

**RICHARD THOMPSON, in his capacity  
as Speaker of the House of Delegates of  
the West Virginia Legislature**

**By Counsel**

/s/ Anthony J. Majestro

Anthony J. Majestro, Esq. (WVSB 5165)  
POWELL & MAJESTRO  
405 Capitol Street, Suite P-1200  
Charleston, WV 25301  
Phone: 304-346-2889  
Fax: 304-346-2895  
[amajestro@powellmajestro.com](mailto:amajestro@powellmajestro.com)

**EARL RAY TOMBLIN, in his capacity  
as the Chief Executive Officer of the  
State of West Virginia  
By Counsel**

/s/ Thomas Rodd  
Thomas W. Rodd, Esq. (WVSB 3143)  
West Virginia Attorney General's Office  
812 Quarrier Street, 6<sup>th</sup> Floor  
Charleston, WV 25301  
[twr@wvago.gov](mailto:twr@wvago.gov)

/s/ G. Kurt Dettinger  
G. Kurt Dettinger (WVSB 9336)  
Steptoe & Johnson, PLLC  
PO Box 1588  
Charleston, WV 25326  
Phone: 304-353-8000  
Fax: 304-353-8180  
[Kurt.Dettinger@steptoe-johnson.com](mailto:Kurt.Dettinger@steptoe-johnson.com)

**JEFFREY KESSLER, in his capacity as  
President of the West Virginia State  
Senate  
By Counsel**

/s/ George E. Carenbauer  
George E. Carenbauer (WVSB 634)  
Steptoe & Johnson, PLLC  
Po Box 1588  
Charleston, WV 25326  
Phone: 304-353-8000  
Fax: 304-353-8180  
[George.Carenbauer@Steptoe-Johnson.Com](mailto:George.Carenbauer@Steptoe-Johnson.Com)

/s/ Ray E. Ratliff  
Ray E. Ratliff (WVSB 3022)  
Chief Counsel to the  
West Virginia Senate President  
Building 227M-01  
1900 Kanawha Boulevard, East  
Charleston, WV 25305  
Phone: 304-357-7801  
Fax: 304-357-7839  
[Ray.Ratliff@wvsenate.Gov](mailto:Ray.Ratliff@wvsenate.Gov)

### CERTIFICATE OF SERVICE

I, Anthony J. Majestro, do hereby certify that on December 3, 2012, I electronically filed the forgoing **DEFENDANTS' RESPONSE TO ORDER ON REMAND** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

David M. Hammer, Esq.  
Hammer, Ferretti & Schiavoni  
408 W. King Street  
Martinsburg, WV 25401  
Phone: 304-264-8505  
Fax: 304-264-8506  
[dhammer@hfslawyers.com](mailto:dhammer@hfslawyers.com)  
*Counsel for Plaintiffs*

Stephen G. Skinner, Esq.  
Skinner Law Firm  
PO Box 487  
Charles Town, WV 25414  
Phone: 304-725-7029  
Fax: 304-725-4082  
[sskinner@skinnerfirm.com](mailto:sskinner@skinnerfirm.com)  
*Counsel for Plaintiffs*

Thornton Cooper, *pro se*  
3015 Ridgeview Drive  
South Charleston, WV 25303  
304-744-9616  
thornbush@att.net

Thomas Rodd, Esq.  
West Virginia Attorney General's Office  
812 Quarrier Street, 6<sup>th</sup> Floor  
Charleston, WV 25301  
*Counsel for the Secretary of State and  
the Governor*

George E. Carenbauer (WVSB 634)  
Steptoe & Johnson  
PO Box 1588  
Charleston, WV 25326  
Phone: 304-353-8000  
Fax: 304-353-8180  
[George.Carenbauer@steptoe-johnson.com](mailto:George.Carenbauer@steptoe-johnson.com)  
*Counsel for the President of the WV  
State Senate*

/s/ Anthony J. Majestro  
**Anthony J. Majestro (WVSB 5165)**